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Individual Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ARIEL ABITTAN,

Plaintiff,

v.

LILY CHAO (A/K/A TIFFANY CHEN, A/K/A  
YUTING CHEN), DAMIEN DING (A/K/A  
DAMIEN LEUNG, A/K/A TAO DING),  
TEMUJIN LABS INC. (A DELAWARE  
CORPORATION), AND TEMUJIN LABS INC.  
(A CAYMAN CORPORATION),

Defendants,

and

EIAN LABS INC.,

Nominal Defendant.

Case No.: 5:20-cv-09340

**INDIVIDUAL DEFENDANTS' AND  
TEMUJIN LABS INC. (CAYMAN)'S  
NOTICE OF MOTION AND MOTION  
TO DISMISS OR IN THE  
ALTERNATIVE QUASH SERVICE OF  
SUMMONS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: July 7, 2021

Time: 1:00 p.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Nathanael Cousins

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ATTORNEYS AT LAW

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**NOTICE OF MOTION AND MOTION TO DISMISS OR IN  
THE ALTERNATIVE QUASH SERVICE OF SUMMONS**

PLEASE TAKE NOTICE that on July 7, 2021 at 1:00 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Nathanael M. Cousins, located at the United States District Court for the Northern District of California, 280 South First Street, 4th Floor, San Jose, California, Temujin Labs Inc. (Cayman) (“Temujin Cayman”) and the two individual defendants (“Individual Defendants” and, together with Temujin Cayman, the “Moving Defendants”) will, and hereby do, move to dismiss or in the alternative quash the service of a summons in this action pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure. This motion is based on the Memorandum of Points and Authorities below, the accompanying Declaration of Jennifer Bretan (“Bretan Decl.”) and attached exhibits, the Request for Judicial Notice, the [Proposed] Order, the arguments of counsel, and any other matters properly before the Court.<sup>1</sup>

**ISSUES TO BE DECIDED**

1. Whether plaintiff has failed to serve process on either of the Individual Defendants or Temujin Cayman.
2. Whether plaintiff lacks good cause for his failure to serve the Moving Defendants within ninety (90) days of filing his complaint.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

For nearly two months, plaintiff represented to the Court and to defendants that he intended to dismiss this action, and thereafter refile his claims as a countersuit in an earlier filed state court action. As the 90-day deadline for service of process approached, however, plaintiff waffled, and a veritable comedy of errors ensued in his efforts to – unsuccessfully – serve his Complaint on various of the defendants. The parade of ineffectual actions plaintiff undertook include the following:

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<sup>1</sup> Unless otherwise noted, references to “¶” are to paragraphs in plaintiff’s complaint and references to Exhibits (“Ex.”) are to the exhibits to the Bretan Decl.

- 1 • Purporting to leave service papers at a residence supposedly belonging to the Individual Defendants, *but not specifying the address* in the proof of service, as required under Rule 4;
- 2
- 3 • Purporting to leave the service papers with a housekeeper without establishing – as the law requires – that she actually *resides* at that address;
- 4
- 5 • Mailing copies of the service papers to an incorrect address (69 Isabella Ave. in Atherton), *i.e.*, a house where no defendant resides or conducts business;
- 6
- 7 • Making the demonstrably false assumption that the two Individual Defendants are married (they are not), and therefore must live together (they do not), and so can be served at the same address;
- 8
- 9 • Attempting to serve a foreign entity, Temujin Cayman, through the wrong registered agent for service of process; and
- 10
- 11 • After realizing service on Temujin Cayman was erroneous, inexplicably serving Temujin Cayman at the same residential address (69 Isabella Ave.) where no defendant, much less Temujin Cayman, resides or conducts business.

12 Because these efforts do not remotely suffice to effect service under governing law, the action  
13 against the Moving Defendants should be dismissed, or service against them quashed.

14 Not only were these service attempts futile, they were made at precisely the same time  
15 plaintiff was representing – both to this Court and defendants alike – that he would voluntarily  
16 dismiss this case in favor of proceeding in the state court action. As inquiries to plaintiff over the  
17 status of the promised dismissal went unanswered, or were met with excuses that dismissal was  
18 delayed by plaintiff’s travel, plaintiff was taking actions (*i.e.*, the aforementioned service  
19 attempts) that were entirely inconsistent with his stated intention to dismiss. Once he believed  
20 (wrongly) that service of process was accomplished, plaintiff quickly reversed course and  
21 disclaimed any interest in dismissal. These sharp tactics employed are to no avail, however, as  
22 none of the efforts made to serve the Moving Defendants were effective.

23 To date, only defendant Temujin Labs Inc. (Delaware) (“Temujin Delaware”) (which is  
24 wholly owned by Temujin Cayman, and is the plaintiff in the prior-pending state court action) has  
25 been properly served, through its registered agent in Delaware.<sup>2</sup> The Moving Defendants, which  
26 includes a foreign entity, have not been validly served, by any method, and they now move to  
27 dismiss or quash service, accordingly.

28 <sup>2</sup> Temujin Delaware’s separate motion to dismiss is pending at this time.

**II. STATEMENT OF FACTS**

**A. Parties**

As discussed in greater detail in Temujin Delaware’s Motion to Dismiss (Dkt. No. 36), plaintiff is a New York resident who claims to be a co-founder and co-owner of a blockchain-based financial technology project that Temujin Delaware helped develop under the trade name “Findora.” ¶¶ 21, 24, 43.<sup>3</sup> Findora’s mission is to support an online platform where blockchain processes verify transactions in a transparent way, while also protecting transaction privacy. *See* ¶ 43. The Findora ledger is designed to record transactions publicly, while maintaining as confidential the types and amounts of digital assets exchanged. Thus far, the Findora project has shown great promise. *See, e.g.*, ¶ 156.

Temujin Delaware, which is not a party to this motion, is a Delaware corporation with its principal place of business in Santa Clara County, California and provides services to Temujin Cayman in connection with the development and operations of Findora. ¶ 24. Temujin Cayman is a Cayman Islands corporation. ¶ 25. Temujin Cayman’s registered office is a P.O. Box listed in the Cayman Islands General Registry. Ex. B. Plaintiff also asserts claims against certain individuals allegedly associated with the Temujin entities and the Findora project, and in connection with a purported luxury watch business on which they collaborated: “Lily Chao (a/k/a Tiffany Chen, a/k/a Yuting Chen)” (“Ms. Chao”) and “Damien Ding (a/k/a Damien Leung, a/k/a Tao Ding).”<sup>4</sup> Plaintiff also names Eian Labs Inc. (“Eian”) (formerly known as Porepsus Labs Inc.) as a nominal defendant, and, despite the fact that he is not alleged to be a shareholder of that entity, purports to bring derivative claims on Eian’s behalf. ¶¶ 22-23, 26.

**B. Procedural History**

Plaintiff’s assertion that he maintains an ownership interest in the Findora project is a claim he made for months before filing this action, most notably to Temujin Delaware employees

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<sup>3</sup> “Blockchain” refers to a process whereby a list of records (typically of digital currency) is vetted and confirmed by network participants in a decentralized fashion. Blocks of verified records are periodically recorded on a public ledger referred to as the blockchain.

<sup>4</sup> Plaintiff’s substantive confusion of identities reflected in the Complaint is not addressed in this motion, which solely concerns ineffective service.

1 and consultants. The doubt sowed by plaintiff’s false allegations of ownership took root,  
 2 ultimately causing key members of the team to stop contributing and to interfere with project  
 3 development. By October 2020, the distractions had reached a crisis level, with several  
 4 individuals – including Charles Lu (Temujin Delaware’s then-CEO), project advisor Benjamin  
 5 Fisch, and others – abruptly resigning. ¶¶ 5, 119, 124. Pointing to plaintiff’s disputed ownership  
 6 claims, several of them also conspired with plaintiff to spur further defection and disrupt ongoing  
 7 operations (*e.g.*, by withholding access to Findora’s social media and project development  
 8 accounts and wrongfully attempting to open-source key code), while seeking to launch competing  
 9 projects. Because of the false claims of ownership, and other disruptions to the Findora project,  
 10 Temujin Delaware was forced to take action by filing suit on November 6, 2020 against plaintiff  
 11 (and Messrs. Lu and Fisch) in Santa Clara County Superior Court. *See Temujin Labs Inc. v.*  
 12 *Abittan et al.*, No. 20CV372622 (complaint at Dkt. No. 37, Ex. E) (the “State Action”). Central  
 13 to that dispute is the same claim plaintiff presses here: ownership of the Findora project and its  
 14 intellectual property and associated rights and entitlements.

15 Ignoring the pendency of the State Action based on the same core set of facts, plaintiff  
 16 filed this suit on December 24, 2020. The Complaint asserts thirteen claims. Temujin Delaware,  
 17 which is the only entity served to date, has moved to dismiss the ten claims against it: (1) four  
 18 derivative claims purportedly on Eian’s behalf (aiding and abetting breach of fiduciary duty,  
 19 fraudulent inducement, unjust enrichment, and a request for an accounting); and (2) six direct  
 20 claims (civil violation and conspiracy under the Racketeer Influenced and Corrupt Organizations  
 21 Act (“RICO”), fraud, conversion, unjust enrichment, and accounting). Dkt. No. 36. Other  
 22 claims, including a derivative breach of fiduciary duty claim (¶¶ 142-148), and direct claims for  
 23 breach of contract (¶¶ 195-199) and defamation (¶¶ 211-214), are brought solely against one or  
 24 both of the Individual Defendants.

### 25 C. Initial Service Attempt On Temujin Cayman Through Paracorp Inc.

26 On January 29, 2021, plaintiff served Temujin Delaware via Paracorp Inc. (“Paracorp”),  
 27 its registered agent for service of process in Delaware (Dkt. No. 14). On the same day, plaintiff  
 28 inexplicably attempted to serve Temujin Cayman through Paracorp – which is *not its* registered



1 agent. Dkt. No. 13 (“Person Served: Michael Miller-McCreanor, Paracorp Inc., Registered Agent  
2 for Service of Process, authorized to accept served under F.R.C.P. Rule 4”). Plaintiff’s proof of  
3 service does not demonstrate the existence of any relationship between Paracorp and Temujin  
4 Cayman. Apparently conceding that such service was deficient, plaintiff made an equally  
5 ineffective attempt to serve Temujin Cayman at an address in Atherton, California, as described  
6 below. Dkt. Nos. 25-27. At no point did plaintiff resort to well-established procedures for  
7 serving foreign entities, such as the Hague Service Convention, which are designed to maintain  
8 international comity with foreign entities and their governments.

9 **D. While Claiming That He Intended To Voluntarily Dismiss This Action,**  
10 **Plaintiff Attempts Substitute Service On The Moving Defendants**

11 On March 2, 2021, three days before Temujin Delaware’s motion to dismiss the  
12 Complaint was due, plaintiff proposed to voluntarily dismiss this action in favor of proceeding in  
13 the State Action. Bretan Decl., ¶ 7; Ex. F. In light of this development, Temujin Delaware  
14 ceased work on its motion, and the parties submitted a stipulation extending the deadlines to  
15 respond to the Complaint while papering the dismissal. Bretan Decl. ¶ 7; Dkt. No. 21.  
16 Thereafter, despite repeated inquiries with respect to the status of the dismissal, little progress  
17 was made, delays which were ascribed to client travel by plaintiff’s counsel. Bretan Decl., ¶ 9,  
18 Exs. H. Plaintiff reaffirmed his intent to dismiss in an opposition he filed in response to Temujin  
19 Delaware’s notice of the pending State Action on March 17, 2021 (Dkt. No. 23) (noting “a  
20 voluntary dismissal of this action in favor of [p]laintiff re-filing [p]laintiff’s claims’ in the [s]tate  
21 [a]ction” was contemplated). That evening, plaintiff reached out to assure that the opposition  
22 notice “was done to preserve our position in the litigation while we continue work on the  
23 voluntary dismissal stip, not as a reversal of course.” Bretan Decl. ¶ 8, Ex. G.

24 The following day, on March 18, 2021, plaintiff attempted to serve each of the Moving  
25 Defendants by substitute service. Bretan Decl. ¶ 9. The proofs of service filed as to each of the  
26 Moving Defendants were executed by an individual identified as Robert Ferris, P.I. 14584 and  
27 state: “I left the summons at the individual’s residence or usual place of abode with [] Patricia  
28 Bedolla, a person of suitable age and discretion who resides there, on [] 03/18/2021, and mailed a

copy to the individual's last known address." Dkt. Nos. 25-27. The proofs omit the address where service was supposedly completed and do not provide support for the assertion that the individual identified, Patricia Bedolla (a housekeeper), resides at the property, as opposed to being someone who was merely present that day to clean the house. *Id.*<sup>5</sup> Plaintiff also filed proofs of service supposedly reflecting that the summons and complaint were mailed to each of the Moving Defendants on March 19, 2021, by a second individual, Kellie Emmons, to 69 Isabella Avenue, Atherton, California 94027 ("69 Isabella Ave."). Dkt. Nos. 28-30 ("Person served: MAILED PURSUANT TO COVID-19 REGULATIONS"). These proofs of service do not provide evidence that any defendant in this action resides at 69 Isabella Ave., or that 69 Isabella Ave. is the place of business, physical address, or mailing address of any defendant. To the contrary, 69 Isabella Ave. appears to be a residential property owned by an entity called Nessco Investments LLC ("Nessco"). Ex. E.

Plaintiff has stipulated, and the Court has approved, that the Moving Defendants' instant motion challenging service under Federal Rule of Civil Procedure 12(b)(5) may be bifurcated from any further motion practice and brought first. Dkt. No. 44.

### III. LEGAL STANDARD

Rule 12(b)(5) permits a defendant to challenge the mode or method of service of the summons and complaint. Where the efficacy of service is contested, the burden is on the party claiming proper service to establish its validity. *Van v. Black Angus Steakhouses, LLC*, 2018 WL 2763330, at \*2 (N.D. Cal. June 8, 2018). Plaintiff must demonstrate *with evidence* that service actually complied with Rule 4 or that there is a fact issue requiring an evidentiary hearing to resolve. *Tinsley v. Comm'r of I.R.S.*, 1998 WL 59481, at \*3 (N.D. Tex. Feb. 9, 1998); *see also Jones v. James Trading Co.*, 2019 WL 6354392, at \*3 (C.D. Cal. July 3, 2019) ("[N]either 'actual notice [of an action] nor simply naming the person in the caption of the complaint will subject

<sup>5</sup> By letter of April 7, 2021, plaintiff's former counsel demanded \$18,622.11 in connection with the purported service on the Moving Defendants via Ms. Bedolla (claiming she was "Ding and Chao's housekeeper") and claimed plaintiff would seek another \$40,000 to \$50,000 in fees and costs if the Moving Defendants did not agree to pay. *See* Bretan Decl. ¶ 11, Ex. J. Defense counsel asked plaintiff to substantiate these alleged costs, given the exorbitant amounts that were purportedly spent to drop a service package off at a residence, but no response to this request was ever received. *Id.* ¶ 12, Ex. K.

defendants to personal jurisdiction if service was not made in substantial compliance with Rule 4.”) (quoting *Crowley v. Bannister*, 764 F.3d 967, 975 (9th Cir. 2013)).

While a plaintiff typically meets this burden by producing the process server’s return of service, the proof of service does not itself operate as *prima facie* evidence of the conditions necessary for valid service. *Mach 1 Air Servs., Inc. v. Mainfreight, Inc.*, 2015 WL 11181334, at \*3 (D. Ariz. Mar. 5, 2015) (proof of service is not *prima facie* evidence that corporate subsidiary was statutory or general agent for service of process on parent company); *see also Yao v. Crisnic Fund, S.A.*, 2011 WL 3818406, at \*7 (C.D. Cal. Aug. 29, 2011) (“Even if Plaintiff could show that substitute service on [consultant] could be effective as service on [defendant corporation]—which the Court highly doubts—the proof of service itself supplies no connection between [consultant] and [defendant corporation].”). Further, a proof of service that omits basic information – for example, the address where service was made – cannot itself demonstrate effective service. *See Esget v. TCM Fin. Servs. LLC*, 2011 WL 4089550, at \*2 (E.D. Cal. Sept. 13, 2011) (omission of address renders proof of service facially defective). If service of process is insufficient, the court may dismiss an action entirely or may simply quash the service attempted and order that defective service be cured. *Van*, 2018 WL 2763330, at \*2.

#### IV. ARGUMENT

##### A. Plaintiff Has Failed To Serve Any Individual Defendant

Plaintiff does not claim to have personally served either of the Individual Defendants. Instead, he purports to have served each of them through substitute means, by leaving service papers at a residence (without stating an address) and thereafter mailing service copies to 69 Isabella Ave. Dkt. Nos. 25-26. Under Rule 4(e)(2)(B), substitute service on individuals is authorized by “leaving a copy of each at the *individual’s dwelling or usual place of abode* with someone of suitable age and discretion *who resides there*” (emphasis added). Alternatively, Rule 4 permits service in compliance with the forum state’s law, and California law permits substitute service on individuals by “leaving a copy of the summons and complaint at the person’s *dwelling house, usual place of abode, usual place of business, or usual mailing address*” with “*a competent member of the household or a person apparently in charge* of his or her office, place

1 of business, or usual mailing address.” Fed R. Civ. P. 4(e)(1); Cal. Code Civ. Proc. § 415.20(b)  
 2 (emphasis added). Plaintiff’s service attempts on the Individual Defendants do not satisfy federal  
 3 or state law.

4 **1. Plaintiff’s Proofs Of Service Are Defective And Do Not Establish**  
 5 **Proper Service Of Process**

6 The proofs purporting to reflect service at the Individual Defendants’ residence are  
 7 facially defective. They do not list the residential address at which papers allegedly were left, let  
 8 alone establish that the location is either of the Individuals Defendants’ usual residence, place of  
 9 business, or mailing address, under Rule 4 or state law. The proofs say only that Robert Ferris, a  
 10 private investigator, “left the summons at the individual’s residence or usual place of abode with  
 11 [] Patricia Bedolla, a person of suitable age and discretion who resides there, on [] 03/18/2021,  
 12 and mailed a copy to the individual’s last known address.” Dkt. Nos. 25-26. No specific address  
 13 is listed, much less one linked to an Individual Defendant, and the proofs are thus insufficient to  
 14 meet plaintiff’s burden to demonstrate service in compliance with Rule 4. *See Esget*, 2011 WL  
 15 4089550, at \*2 (valid service not demonstrated by proof of service omitting suite number from  
 16 address of purported substitute service).

17 The only address information provided appears in separate proofs of service plaintiff filed  
 18 to demonstrate that the summons and complaint were mailed to the Individual Defendants, as is  
 19 required to complete substitute service under state law. Dkt. Nos. 28-29; Cal. Code Civ. Proc. §  
 20 415.20(b). According to those filings, the summons and complaint were “MAILED PURSUANT  
 21 TO COVID-19 REGULATIONS” to 69 Isabella Avenue, Atherton, CA 94027 on March 19,  
 22 2021. However, there is no connection between the two sets of proofs, which were executed by  
 23 different people. Additionally, mailing process to an alleged California resident alone does not  
 24 satisfy federal or state law requirements. *See* Fed R. Civ. P. 4; Cal. Code Civ. Proc. § 415.30 (for  
 25 in-state service, requiring mailing of summons and complaint and defendant’s acknowledgment  
 26 and receipt of summons). Plaintiff also fails to explain what “COVID-19 Regulations” he is  
 27 referring to or how they are relevant to service of process here.  
 28

2. **Plaintiff Has Failed To Establish He Served Any Defendant At The Proper Address**

Any purported substitute service on the Individual Defendants at 69 Isabella Ave. also fails because plaintiff has not demonstrated and cannot demonstrate the requisite connection between either of them and that address. The property is apparently owned by Nessco Investments LLC and nothing suggests that either of the Individual Defendants resides at 69 Isabella Ave. Bretan Decl. ¶ 6, Ex. E. Indeed, the fact that plaintiff purports to have made three attempts to serve them at that address, but never found them there, suggests otherwise. *See, e.g., id.*, Ex. J. Even if either of the Individual Defendants *owned* the property (as noted, they do not; nor is any connection between either of the Individual Defendants and Nessco suggested), substitute service at 69 Isabella Ave. would still not be proper absent a showing that the Individual Defendants *actually* reside there. *See Wai v. Zhu*, 2021 WL 214207, at \*1 (N.D. Cal. Jan. 21, 2021) (substitute service not effective at home owned by defendant who lived elsewhere).

Plaintiff also makes no showing (indeed, has not even suggested) that 69 Isabella Ave. is the Individual Defendants' "place of business" or "usual mailing address" under Cal. Code Civ. Proc. § 415.20(b). Nor could he. 69 Isabella Ave. is not a place of business or mailing address of any individual or entity involved in this case; the property is a single-family home in a part of Atherton zoned R-1A. Ex. C. Under applicable zoning law, the permitted uses of the property are limited to single-family dwelling, second dwelling unit, places of worship, public utilities or facilities, or "home occupations," which means only the inhabitants can be employed at the premises.<sup>6</sup> Plaintiff offers no reason to believe 69 Isabella Ave. is anything but residential, and to the contrary, his proofs of service concede it is a residential address. *See* Dkt. Nos. 25-26 (noting service on an "individual's residence or usual place of abode."). *Cf. Wright v. Ferry*, 2018 WL 1898913, at \*4 (S.D. Cal. Apr. 20, 2018) (noting that under California law, substitute service at individual defendant's place of business is effective at the corporate offices of a corporate entity where he is an officer or director, and conducts some business activities there.); *Corcoran v.*

<sup>6</sup> *See* Atherton Mun. Code 17.32 (Residential District R-1A) and 17.48 (Home Occupations), <http://www.codepublishing.com/CA/Atherton/#!/Atherton17/Atherton17.html>.

1 *Arouh*, 24 Cal. App. 4th 310, 315 (1994) (attempted substitute service defective where no  
2 connection was demonstrated between defendant and address of attempted service).

3 **3. Plaintiff Has Not Shown That The Service Papers Were Left With An**  
4 **Individual That Can Properly Be The Subject Of Effective Service**

5 Plaintiff's purported service also fails because he can make no showing that Patricia  
6 Bedolla, the individual with whom the summons was left (allegedly the Individual Defendants'  
7 "housekeeper"), resides at 69 Isabella Ave. Bretan Decl. ¶ 11, Ex. J. Under Rule 4(e)(2)(B), the  
8 summons and complaint must be left at the defendant's residence with "someone of suitable age  
9 and discretion *who resides there*" (emphasis added). Putting aside that nothing in the Complaint,  
10 much less in the proofs of service, establishes that either Individual Defendant (much less both of  
11 them) resides at 69 Isabella Ave., federal courts interpreting Rule 4 routinely quash service in  
12 cases involving individuals that do not reside at the defendant's dwelling. *Duncan v. Int'l*  
13 *Markets Live, Inc.*, 2020 WL 4369631, at \*3 (S.D. Iowa Apr. 13, 2020) ("Federal district courts  
14 have held service is ineffective under Rule 4(e)(2)(B) when a complaint is served on a  
15 nonresident housekeeper at the defendant's residence.") (listing cases); *Hotel Emps. & Rest.*  
16 *Emps. Int'l Union Welfare Fund ex rel. Zumtobel v. Kephart & Corti Prods., Inc.*, 2012 WL  
17 1155380, at \*4 (D. Nev. Apr. 4, 2012) (substitute service by leaving summons with non-resident  
18 maître d' and bartender not effective); *United States v. Rose*, 437 F. Supp. 2d 1166, 1172 (S.D.  
19 Cal. 2006) ("Where substitute service is used, the person with whom the summons is left *must*  
20 *also be a resident* of the 'usual place of abode.'") (emphasis added; citation omitted). And even  
21 under California law, where process can sometimes be left with "a competent member of the  
22 household or a person apparently in charge of [the defendant's] office, place of business, or usual  
23 mailing address," Cal. Code Civ. Proc. § 415.20(b), plaintiff does not make any showing that Ms.  
24 Bedolla so qualifies. *See Mach I Air Servs.*, 2015 WL 11181334, at \*3 (proof of service is  
25 evidence that service occurred, not that it was valid).

26 **B. Plaintiff Has Failed To Serve Temujin Cayman**

27 As a territory of the United Kingdom, the Cayman Islands is subject to the Hague Service  
28 Convention. *Universal Trading & Inv. Co. v. Kiritchenko*, 2007 WL 295548, at \*2 (N.D. Cal.



Jan 30, 2007) (“The Cayman Islands and the Isle of Man, as territories of the United Kingdom, are signatories to the Hague Convention.”). Plaintiff did not try to utilize those procedures, however. Instead, plaintiff purports to have attempted service on Temujin Cayman through other means. Those efforts fail.

**1. Plaintiff Has Not Served Any “Managing Or General Agent” Or “General Manager” Of Temujin Cayman**

Pursuant to Rule 4(h)(1), service on Temujin Cayman can be made by delivering the complaint to “an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process,” or by serving in a manner authorized by state law. California law permits service of process on a foreign corporation by delivery “to any officer of the corporation or its general manager in this state”. Cal. Code Civ. Proc. § 416.10; Cal. Corp. Code § 2110. Plaintiff’s initial proof of service for Temujin Cayman describes service on “Michael Miller-McCreanor, Paracorp Inc.” Dkt. No. 14. As noted, Paracorp is Temujin *Delaware*’s registered agent for service of process. Ex. A. Plaintiff has not demonstrated, nor can he, that Paracorp is Temujin *Cayman*’s agent. Unless plaintiff can do so, the attempt to serve through Paracorp does not comply with Rule 4 or California law. *Yao*, 2011 WL 3818406, at \*7 (Rule 4(h)(1) inapplicable where no connection demonstrated between supposed “agent” and party to be served).

Nor could service on Temujin Delaware have resulted in valid service on Temujin Cayman. As an initial matter, the proof does not state that Temujin Cayman was being served *through* Temujin Delaware.<sup>7</sup> The fact that Temujin Delaware is owned by Temujin Cayman does not alter this conclusion, as the entities are separate and service is not effective on the parent entity unless plaintiff can show that the Delaware entity is Temujin Cayman’s “general agent.” *Van*, 2018 WL 2763330, at \*3 (service on domestic subsidiary did not result in effective service on foreign parent under Rule 4(h)(1)); *Hickory Travel Sys., Inc. v. TUI AG*, 213 F.R.D. 547, 553

<sup>7</sup> Indeed, Temujin Delaware is not mentioned on the proof of service, only Paracorp, which is an independent basis for finding service defective. *See* Dkt. No 14.

(N.D. Cal. 2003) (“[F]or agency to exist, the subsidiary’s activity must be integral to the parent’s business.”). No such evidence is provided here.

Finally, the attempt to serve through Paracorp is also invalid under applicable state law. State law permits service on a foreign entity’s officer, or on its “general manager” in the state, but plaintiff has not demonstrated that Paracorp – *in Delaware* – is Temujin Cayman’s officer or general manager located *in California*. *SKC Kolon PI, Inc. v. Kaneka Corp.*, 2010 WL 11553177, at \*2 (C.D. Cal. Nov. 18, 2010) (attempted service on foreign parent corporation not authorized by Cal. Corp. Code § 2110; process was delivered to registered agent of Texas-based subsidiary); *Hickory Travel Sys.*, 213 F.R.D. at 552 (“Federal courts interpreting these provisions [of California law] have found them to create no procedure for serving a foreign corporation by serving its domestic subsidiary.”).

## 2. Plaintiff Also Failed To Serve Temujin Cayman Via Substitute Service

Plaintiff’s second effort to serve Temujin Cayman fares no better than his first. In apparent recognition that his initial service attempt was defective, he now claims to have served Temujin Cayman via substitute service in the same manner and at the same location as the Individual Defendants. Plaintiff’s proof of service states that “Temujin (Cayman) c/o Lily Chao” was served by substitute service because the summons and complaint were left with Patricia Bedolla and also mailed to the same address. Dkt. Nos. 27, 30. This is not remotely adequate under governing law.

As with the service attempts on the Individual Defendants, the purported proof does not indicate the specific address at which process was left. Dkt. No. 27. As discussed above, a proof of service which omits the address where service was made is legally inadequate, and by itself justifies granting of the Moving Defendants’ motion. *See Esget*, 2011 WL 4089550, at \*2.

Furthermore, Rule 4(e)(2)(B) does not by its terms authorize substitute service on a corporation, as it does for individuals. While an entity may be served via substitute service consistent with state law, such effort would require plaintiff to serve process at the entity’s office or physical address, or the entity’s usual mailing address if the physical address is unknown. Cal. Code Civ. Proc. § 415.20(a). In turn, the summons and complaint must be left “with the person



1 who is apparently in charge” of the premises, or in the case of service at a mailing address, “with  
2 a person at least 18 years of age, who shall be informed of the contents thereof”. Cal. Code Civ.  
3 Proc. § 415.20(a).

4 California law does not provide any mechanism for serving a foreign corporate entity in  
5 the manner attempted here: delivering process to a purported housekeeper at the claimed  
6 domestic residence of an Individual Defendant who does not live at the residence. For such an  
7 attempt to suffice, 69 Isabella Ave. would need to be *Temujin Cayman’s* physical address or  
8 mailing address. Plaintiff has not and cannot make such a showing, as 69 Isabella Ave. is a  
9 residential property and there is no evidence to suggest it is being used by Temujin Cayman  
10 (much less any other entity) for business purposes. Indeed, plaintiff *did not* list 69 Isabella Ave.  
11 as an address associated with Temujin Cayman in the summons that issued (*see* Dkt. No. 7,  
12 Addendum).

13 Nor has plaintiff demonstrated that Temujin Cayman has *any* physical or mailing address  
14 in the United States. Rather, consistent with the summons plaintiff asked this Court to issue, its  
15 registered office is in the Cayman Islands, as set forth in the jurisdiction’s General Registry. Ex.  
16 B. Further, plaintiff has not demonstrated any connection between Patricia Bedolla and Temujin  
17 Cayman or Ms. Chao, much less that Ms. Bedolla is the “person who is apparently in charge” of  
18 Temujin Cayman’s physical business address. Cal. Code Civ. Proc. § 415.20(a).

19 **C. Plaintiff Has Failed To Serve Moving Defendants Within The Required**  
20 **Ninety Days Of Filing The Complaint**

21 If a defendant is not served within ninety (90) days of a complaint being filed, the court, on  
22 motion or on its own after notice to the plaintiff, must dismiss the action without prejudice (as to  
23 the relevant defendant(s)) or order that service be made within a specified time. Fed. R. Civ. P.  
24 4(m). Plaintiff filed his complaint on December 24, 2020, and thus was required to have served all  
25 parties by March 24, 2021. Here, plaintiff waited until the last minute, and then scrambled to serve  
26 the Moving Defendants (ineffectively) on the same day that he reiterated his intent to dismiss.  
27 Having failed to serve the Individual Defendants or Temujin Cayman within the requisite time, and  
28 without seeking leave to do so outside that time frame, there is no good cause for this failure. *See*

1 *Jones v. Dovere*, 2008 WL 510820, at \*1 (S.D. Cal. Feb. 22, 2008) (“Plaintiff’s ignorance of or  
 2 confusion about service requirements does not constitute ‘good cause’ for failure to serve.”)  
 3 (quoting *Townsel v. Contra Costa Cnty.*, 820 F.3d 319, 320 (9th Cir. 1987)).

4 **V. CONCLUSION**

5 For the foregoing reasons, process is ineffective as to the Moving Defendants and the  
 6 Court should dismiss all claims as to them. In the alternative, the Court should quash plaintiff’s  
 7 prior attempts to serve the Individual Defendants and Temujin Cayman and order plaintiff to  
 8 complete service within sixty (60) days of the Court’s order, failing which, all claims against the  
 9 Individual Defendants and Temujin Cayman should be dismissed with prejudice.

10 Dated: May 28, 2021

FENWICK & WEST LLP

11 By: /s/ Jennifer C. Bretan

12 Jennifer C. Bretan

13 Attorneys for the Individual Defendants and  
 14 Temujin Labs Inc. (Cayman)

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